

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TREMAYNE SILAS,

Defendant.

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No. 4:19-CR-211 RLW

**MEMORANDUM AND ORDER**

This closed criminal matter is before the Court on Defendant's Motion to Allow Notice of Appeal to Be Filed Out of Time (ECF No. 1117). The motion will be denied without prejudice for the following reasons.

**Background**

The Judgment in a Criminal Case (ECF No. 1112) was entered on February 15, 2023. Under Rule 4(b), Federal Rules of Appellate Procedure, the deadline for Defendant to file a Notice of Appeal was fourteen days later, by March 1, 2023.

The motion before the Court states in its entirety, "COMES NOW the Defendant Tremayne Silas, by and through his attorney, Cira R. Duffe, and wishes to amend the 12.07 to say defendant wishes to appeal. Counsel requests an appeal to be filed in this matter." (ECF No. 1117). Defendant did not file a Notice of Appeal along with the motion.

**Discussion**

The procedure for filing a notice of appeal in a criminal case is governed by Federal Rule of Appellate Procedure 4(b), **Appeal in a Criminal Case**, which states in pertinent part:

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or order being appealed; or
- (ii) the filing of the government's notice of appeal.

Fed. R. App. P. 4(b).

Rule 4(b)(4) of the Federal Rules of Appellate Procedure provides:

**Motion for Extension of Time.** *Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).*

Fed. R. App. P. 4(b)(4) (italics added).


Although the time limits of Rule 4(b) “are not jurisdictional limitations, ‘Rule 4(b)’s timeliness requirements [are] inflexible and assure relief to a party properly raising them.” United States v. Starks, 840 F.3d 960, 960 (8th Cir. 2016) (quoting United States v. Watson, 623 F.3d 542, 546 (8th Cir. 2010)).

The Court cannot construe the instant motion as a motion for leave to file a late notice of appeal under Rule 4(b)(4), Fed. R. App. P., because it does not include any statement of facts from which this Court can make a finding that either good cause or excusable neglect exists to permit a late filing, as required by the Rule. See Starks, 840 F.3d 960 (remanding to the district court where it did not determine whether the untimely notice of appeal was the result of excusable neglect or good cause). A showing of either good cause or excusable neglect is sufficient to allow a late appeal. Gibbons v. United States, 317 F.3d 852, 853 (8th Cir. 2003).

Further, Defendant is responsible for filing a Notice of Appeal. The Court does not file a Notice of Appeal for a party upon the request of counsel.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant's Motion to Allow Notice of Appeal to Be Filed Out of Time (ECF No. 1117) is **DENIED** without prejudice.

  
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**RONNIE L. WHITE**  
**UNITED STATES DISTRICT JUDGE**

Dated this 10th day of March, 2023.